

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 14, 2007

LORENZO HERRON v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Wayne County
No. 14100 Stella Hargrove, Judge**

No. M2007-00696-CCA-R3-HC - Filed December 3, 2007

Petitioner, Lorenzo Herron, was sentenced to life in prison following a conviction for first degree murder in 1989. Both Petitioner's direct appeal and appeal from the denial of his petition for post-conviction relief were unsuccessful. He subsequently filed a petition for writ of habeas corpus relief. In his petition, he argued that his indictment was fatally defective. The habeas corpus court summarily dismissed his petition. He now appeals this dismissal. Having reviewed the record in his appeal, we conclude that the indictment was constitutionally sufficient to inform Petitioner of the crime with which he was indicted and vest jurisdiction in the trial court. For this reason, we affirm the habeas corpus court's dismissal of his petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, and ALAN E. GLENN, JJ., joined.

Lorenzo Herron, Pro Se, Clifton, Tennessee

Robert E. Cooper, Jr., Attorney General & Reporter; Rachel West Harmon, Assistant Attorney General; and Mike Bottoms, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On March 31, 1989, Petitioner and the victim drove to Memphis, Tennessee from Fort Bragg, North Carolina, where Petitioner was stationed as a member of the United States Army. *State v. Lorenzo Herron*, C.C.A. No. 72, 1991 WL 99541, at *1 (Tenn. Crim. App., at Jackson, June 12, 1991), *perm. app. denied*, (Tenn. Jan. 27, 1992). In the early morning hours of April 1, when they

arrived in Memphis, Petitioner shot the victim twice. *Id.* The victim's body was found the same day by a fisherman. *Id.*

In July of 1989, the Shelby County Grand Jury indicted Petitioner for one count of first degree murder. Petitioner was convicted of first degree murder and sentenced to life. In 1991, Petitioner unsuccessfully appealed his conviction to this Court. *See id.* Petitioner subsequently filed a petition for post-conviction relief. *Lorenzo Herron v. State*, No. 02-C-01-9605-CR-00141, 1997 WL 421009 (Tenn. Crim. App., at Jackson, July 28, 1997), *perm. app. denied*, (Tenn. April 20, 1998). The post-conviction court dismissed the petition. *Id.* at *1. This Court affirmed the post-conviction court's dismissal of the petition. *Id.*

Petitioner filed a petition for writ of habeas corpus relief on November 21, 2006. The State filed a motion to dismiss on December 18, 2006. On March 1, 2007, the habeas corpus court summarily dismissed the petition. Petitioner now appeals the habeas corpus court's dismissal of his petition.

ANALYSIS

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is a petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 995 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d

619 (Tenn. Crim. App. 1994), *superceded by statute as stated in State v. Steven S. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

Petitioner argues that the habeas corpus court erred in summarily dismissing his petition. He specifically argues that there is a cognizable issue in that his indictment was fatally defective so as to deprive the trial court of proper jurisdiction. Petitioner argues that the fact that his indictment did not include the language “first degree murder” makes the judgment void. He also argues that this fatal flaw led to the indictment not informing him of an essential element of the offense and not giving him proper notice of the crime with which he was indicted. The State argues that the habeas corpus court properly dismissed the petition.

A valid indictment is essential to vest jurisdiction in the convicting court and, therefore, an indictment that is so defective that it fails to invest jurisdiction may be challenged in a habeas corpus proceeding. *State v. Wyatt*, 24 S.W.3d 319, 320-23 (Tenn. 2000). Our supreme court has held that an indictment meets constitutional requirements if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy. *State v. Hill*, 954 S.W.2d 725, 727 (Tenn. 1997). In addition, an indictment must state the facts of the offense in ordinary and concise language. *See* T.C.A. § 40-13-202.

In the case herein, the indictment about which Petitioner complains is attached to the habeas corpus petition and is in the record on appeal. The indictment names Petitioner as the accused, the date of the offense, and states that Petitioner, “did unlawfully, feloniously, willfully, deliberately, maliciously and premeditatedly Kill and Murder [the victim].” At the time of the offense, first degree murder was defined as “Every murder perpetrated by means of poison, lying in wait, or by other kind of willful, deliberate, malicious, and premeditated killing . . .” T.C.A. § 39-2-202(a)(1) (Supp. 1988). The indictment sets forth the elements of the offense, therefore, it is clear the indictment is sufficient to vest jurisdiction in the convicting court. *See State v. Sledge*, 15 S.W.3d 93, 95 (Tenn. 2000); *State v. Carter*, 988 S.W.2d 145, 158 (Tenn. 1999); *Ruff v. State*, 978 S.W.2d 95, 100 (Tenn. 1998); *State v. Hill*, 854 S.W.2d 725, 728 (Tenn. 1997). The judgment against Petitioner is not void and his sentence has not expired. Therefore no grounds exist which would entitle Petitioner to habeas corpus relief. Thus, the trial court was correct in summarily dismissing Petitioner’s habeas corpus petition.

CONCLUSION

Therefore, we affirm the decision of the habeas corpus court.

JERRY L. SMITH, JUDGE